

Taxation Newsflash

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New Finance Leasing Rules

The opportunities for finance leasing activities in Malta have been greatly enhanced by new Finance Leasing Rules which although published in November 2005 apply to finance leases which commenced on or after 1 January 2005.

A finance lease may be provided by a financial institution which has either been licensed under the Maltese Financial Institutions Act or be a company of a similar nature incorporated outside Malta.

A finance lease is constituted by the lease of an asset on or after the 1st January, 2005 involving the payment by the lessee to the lessor over a number of years of the full, or nearly the full cost of the asset together with a return on the finance provided by the lessor and such other remuneration as may be reasonable in the circumstances of the case. The lessee shall substantially assume all the risks and rewards normally associated with the ownership of an asset, other than the legal title thereto. A contract of hire purchase, a lease purchase agreement, an operating lease and similar arrangements, as well as sale and leaseback transactions shall not constitute a finance lease.

Any fixed asset may be the subject of a finance lease, except immovable property. The period of the lease must be four years or more and cannot be shorter than the minimum period of the asset's

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Permanent Residence Permits in Malta

Malta's Permanent Residence Permit Scheme allows foreigners to settle down in Malta and benefit from an attractive tax rate. While a Permit holder cannot conduct any business in Malta, he or she can still conduct business overseas and this is also possible through a Maltese International Trading Company.

To qualify for a Permit, the foreigner must meet the following requirements:

1. an annual income equivalent to Lm10,000 or capital equivalent to Lm150,000;
2. remit annually to Malta an income equivalent to Lm6,000 and Lm1,000 in respect of each dependant (spouse, children under 21 years of age and/or a parent or grandparent who is wholly dependent on the applicant);
3. either purchase immovable property valued at not less than Lm50,000 (Lm30,000 in the case of an apartment), or lease/rent property for not less than Lm1,800 per annum.

Permanent residents are taxed at the rate of 15% on all income arising in Malta and on all income arising outside Malta (except capital gains) remitted to Malta. The minimum amount on which the tax will be payable is on Lm12,000 covering all members of the family. Therefore the minimum tax is Lm1,800 per annum and is payable in advance for the first year and in 4 instalments in subsequent years. The first Lm2,500 is tax free in the hands of a married person, while the amount of Lm1,800 is tax free in the hands of a single person.

A Permit holder can import used household and personal effects, furniture and other domestic articles (excluding firearms and weapons of all kinds) free of import duty if imported within six months of arrival in Malta to take up residence. In such cases import licences are not required. One private motor-vehicle may also be imported free of VAT, although registration tax is still payable at rate of 11% (under 1500cc engine) or 16.5% (1500cc engine or larger). ❖

depreciation as established by law, for example: 4 years for computers and electronic equipment, 5 years for motor vehicles, 6 years for medical equipment, 10 years for ships and vessels and 12 years for aircraft. The finance lease must be notified to the Commissioner of Inland Revenue.

The lessor pays income tax on the full amount of the annual lease payments, but is entitled to a deduction in respect of the wear and tear of the leased asset. The lessee is entitled to an income tax deduction in respect of the full amount of the lease payments made by him. If the ownership of a leased asset is eventually transferred to the lessee, any payment made to the lessor in excess of the total agreed annual payments will be subject to income tax in the hands of the lessor. Thereafter the lessee will be entitled to any applicable wear and tear deductions.

With more companies looking towards financial leasing, these Regulations have introduced the tax certainty which will surely promote a widespread use of this financial product in Malta. ❖

New Securitisation Law

The Maltese Parliament is currently considering a new securitisation law which is generally based on the Luxembourg model. It provides a comprehensive framework for the conversion of receivables or other assets into securities that can be placed and traded in capital markets. Issued securities are collateralised by the pool of assets which are transferred to a separate entity, the securitisation vehicle, also referred to as Special Purpose Vehicle (SPV). The SPV can take the form of an investment company, a partnership, a trust and any other legal structure permitted by the competent authority. According to the Bill there can be three forms of securitisation: asset securitisation, synthetic securitisation (which does not involve a transfer of receivables by the originator to the securitisation vehicle) and loan securitisation, wherein the originator, as owner of income-producing assets, raises funds by issuing notes or bonds (secured by its assets) in the capital markets. Investors in an SPV would enjoy a first-ranking privilege over the securitised assets and their proceeds. Securitisation transactions will in principle not be regulated. However the constitutive documents of the SPV must provide that they are subject to the provisions of this law and the SPV must give notice to the competent authority that it intends to enter into one or more securitisation transactions. A licence from the competent authority is required before the SPV can issue securities to the public. The Bill has the support of both sides of Parliament and is expected to come into force soon after the conclusion of the parliamentary process. ❖

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Off-Exchange Trading

The Off-Exchange Trading Regulations came into force on the 27th January 2006. With the market capitalisation of the Malta Stock Exchange (MSE) currently topping US\$1 billion and a constant increase in turnover, off-exchange trading means more flexibility for authorised intermediaries and investors. For listed securities to be traded outside the MSE a number of conditions must be met, namely: (a) they are executed through an authorised intermediary who must pre-validate the trade by confirming that the securities to be traded are held by the seller; (b) the authorised intermediary has obtained the express prior written consent of the client for each transaction, and if such consent is given orally a suitable record thereof is kept; and (c) the transaction must be reported to the MSE within ten minutes or, if concluded outside trading hours, before the opening of its next trading session. The MSE and the MFSA have set up the technical infrastructure required to allow authorised intermediaries to satisfy their pre-validation and reporting obligations. ❖

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